

## **House Dems to Chairman Issa: Pressing NLRB to Testify Now Raises Serious Constitutional and Ethical Concerns**

WASHINGTON, D.C. – Citing constitutional and ethical concerns, Rep. Elijah E. Cummings (D-MD), the senior Democrat of the Committee on Oversight and Government Reform, and Rep. George Miller (D-CA), the senior Democrat of the Education and the Workforce Committee, called on Chairman Darrell Issa today to delay his demand that National Labor Relations Board's (NLRB) Acting General Counsel testify Friday on the agency's ongoing case against Boeing. The case is currently being argued before an administrative law judge.

"[I]t is the Committee's concern, and it is the concern of all Members of Congress that we conduct ourselves in a manner that upholds the Constitution," Cummings and Miller wrote. "Recognizing the risk of interference, as well as the risk of the appearance of interference, a responsible chairman would take care to minimize these risks. Rather than creating a new basis for appealing any final agency decision, increasing uncertainty, and shifting the costs of your interference onto private parties, the Committee should wait until the case is no longer pending before calling the Chief Prosecutor to testify at a hearing about that case."

Under the threat of a subpoena, Chairman Issa demanded that NLRB's Acting General Counsel Lafe Solomon appear before the Oversight and Government Reform Committee on Friday to answer questions about the agency's case against Boeing. Top Republicans on both the Oversight and Government Reform and Education and the Workforce Committees have also requested that Solomon turn over sensitive internal documents relating to the ongoing case.

Cummings and Miller warned that having Solomon testify at this time could interfere with ongoing legal proceedings and impair the due process rights of private parties. "There is still an opportunity for you to demonstrate some modicum of concern about the constitutional and ethical impact of what you are doing," Cummings and Miller wrote. "We strongly urge you to be circumspect about the nature of the questions you and other Members pose to the chief prosecutor of this live case at the hearing. At a minimum, we ask that you direct Committee Members to limit all questions to Mr. Solomon to general questions about the NLRB and its processes, and not issues related to the ongoing proceeding before the Administrative Law Judge."

Chairman Issa rejected Solomon's offer to provide an agency witness not directly involved in the Boeing case in order to minimize any undue influence on the ongoing proceeding, while still addressing the Committee's responsibility for oversight.

"After being invited to testify, Mr. Solomon expressed his serious reservations to you about his appearance and its potential impact on the due process rights of the parties to the case. You overruled those concerns and threatened to use compulsory means to force Mr. Solomon's appearance," said Cummings and Miller. "Mr. Solomon's reservations are clear, and we share those reservations. Rather than entirely dismissing those reservations, you show ultimate disregard for them."

NLRB's Acting General Counsel has alleged that Boeing engaged in unlawful retaliation against workers in its Washington state operation. The company moved part of its Washington state operation to a non-union plant in South Carolina because, as the company said in news reports, workers in Washington had repeatedly exercised their right to strike under the National Labor Relations Act (NLRA). A new production line in Washington will be eliminated as a result of the move. Under the NLRA, it is illegal for companies to retaliate against workers, union or non-union, because they exercised their legal rights.

[Read the full letter.](#)